

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

COREY MATTHEW CAMPANA,

Plaintiff,

v.

ADAM ZEHR,

Defendant.

Case No. 3:15-cv-00192-MMD-WGC

**ORDER**

Before the court is Plaintiff's Objection to the undersigned's Report and Recommendation (ECF No. 15)<sup>1</sup>, which the court will treat as a request for reconsideration of the court's recommendation that Plaintiff's action be dismissed with prejudice.

On August 21, 2015, the undersigned issued a report and recommendation granting Plaintiff's application to proceed in forma pauperis (subject to the provisions of 28 U.S.C. § 1915(b)), and screening Plaintiff's complaint. (ECF No. 13.)

The court noted that Plaintiff's complaint asserts a single claim for violation of his Fourth Amendment rights related to the traffic stop that lead to his arrest and incarceration. (ECF No. 13 at 4.) Specifically, Plaintiff alleges that defendant Officer Zehr pulled him over for exceeding the speed limit and during the stop he leaned into the passenger side of the vehicle Plaintiff was driving, and claimed to detect the odor of marijuana. Plaintiff avers that this was an unlawful search that led to his arrest, violated his constitutional rights, and contributed to his extreme anxiety, mental and emotional anguish, and the loss of custody of his four-year-old daughter.

Plaintiff alleged that the criminal case was "set to be dismissed," and while Plaintiff's complaint referenced a motion to suppress filed in the underlying criminal case, he did not provide the disposition of it or the underlying criminal case. As a result, the court recommended

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<sup>1</sup> Refers to court's electronic case filing (ECF) number.

1 that the action be dismissed without prejudice, so that Plaintiff could renew it in the event he  
 2 succeeded in having the criminal conviction invalidated. (*See* ECF No. 13 at 5-6.)

3 In his objection to the report and recommendation, Plaintiff provides a declaration stating  
 4 that on May 5, 2015, the criminal case involving the alleged illegal search was dismissed with  
 5 prejudice, noting he is currently incarcerated under a separate charge. (ECF No. 15.) As a result  
 6 of this information, the court reconsiders and withdraws its recommendation that Plaintiff's  
 7 action be dismissed without prejudice.

8 The court now finds that Plaintiff states a plausible claim for relief under the Fourth  
 9 Amendment of the United States Constitution, and that such claim may proceed.

### 10 **CONCLUSION**

- 11 (1) The court's report and recommendation (ECF No. 13) is **WITHDRAWN**;  
 12 (2) Plaintiff's application to proceed in forma pauperis (ECF No. 12) is **GRANTED**; however,  
 13 pursuant to 28 U.S.C. § 1915(b), Plaintiff is still required to pay the full amount of the filing fee  
 14 over time. If he has not already done so, within thirty days of the date of this order, Plaintiff must  
 15 pay an initial partial filing fee of \$22.17. Thereafter, Plaintiff is required to make monthly  
 16 payments of twenty percent of the preceding month's income credited to his account to be  
 17 forwarded by the agency having custody over Plaintiff to the Clerk of this court each time the  
 18 amount in Plaintiff's account exceeds \$10 until the filing fee is paid. The order granting in forma  
 19 pauperis status does not extend to the issuance of subpoenas at government expense;  
 20 (3) The Clerk shall **FILE** Plaintiff's Complaint (ECF No. 1-1) and the Complaint is permitted to  
 21 **PROCEED** with the single Fourth Amendment claim against defendant Adam Zehr;  
 22 (4) Where an in forma pauperis plaintiff is also incarcerated, he or she may rely upon the United  
 23 States Marshal to effect service after providing the Marshal with all necessary information. Thus,  
 24 the Clerk shall **ISSUE** a summons for the named defendant and deliver the same to the U.S.  
 25 Marshal. The Clerk shall **SEND** Plaintiff sufficient copies of the complaint and service of  
 26 process form (USM-285) for the defendant. Plaintiff has **TWENTY DAYS** from the date of this  
 27 Order to furnish the U.S. Marshal with the required form USM-285 for the defendant. The U.S.  
 28 Marshal will then proceed with service on the defendant. Within twenty days after receiving

1 from the U.S. Marshal a copy of the USM-285 form showing whether or not service has been  
2 accomplished, Plaintiff must file a notice with the court identifying whether the defendant has  
3 been served. If service was not accomplished, and Plaintiff wishes to have service attempted  
4 again, a motion must be filed with the court identifying the unserved defendant and specifying a  
5 more detailed name and/or address, or whether some other manner of service should be  
6 attempted. Plaintiff is reminded that, pursuant to Rule 4(m) of the Federal Rules of Civil  
7 procedure, service must be accomplished within **120 DAYS** of the date of this Order;

8 (5) From now on, Plaintiff shall serve upon the defendant, or if an appearance has been entered  
9 by counsel, upon the attorney, a copy of every pleading, motion or other document submitted for  
10 consideration by the court. Plaintiff shall include with the original paper to be filed with the  
11 Clerk a certificate stating the date that a true and correct copy of the document was mailed to the  
12 defendant or counsel. The court may disregard any paper received by a district judge or  
13 magistrate judge which has not been filed with the Clerk, and any paper received which fails to  
14 include a certificate of service.

15 **IT IS SO ORDERED.**

16 Dated: January 11, 2016.

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18 WILLIAM G. COBB  
19 UNITED STATES MAGISTRATE JUDGE  
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